

**RESOLUTION GRANTING EXTENSION OF TIME TO FILE THIRD ROUND  
PETITION FOR SUBSTANTIVE CERTIFICATION AND IMPOSING SCARCE  
RESOURCE RESTRAINT UPON HIGHLANDS REGION MUNICIPALITIES**

WHEREAS, the New Jersey Supreme Court determined, in its Mount Laurel decisions, that every New Jersey municipality has a constitutional obligation to provide, through its land use regulations, a realistic opportunity for a fair share of the region's present and prospective needs for housing that is affordable to low and moderate income families; and

WHEREAS, the New Jersey Legislature enacted the Fair Housing Act on July 2, 1985 to establish an administrative alternative to the disputes involving exclusionary zoning previously heard by the Court; and

WHEREAS, the Fair Housing Act specifies that the interest of all New Jersey citizens, including low and moderate income families in need of affordable housing, would be best served by a comprehensive planning and implementation process, and establishes the Council on Affordable Housing (COAH), granting COAH the responsibility to determine municipal compliance with the Fair Housing Act in accordance with sound regional planning considerations for municipalities that have placed themselves under COAH's jurisdiction; and

WHEREAS, the New Jersey Highlands Water Protection and Planning Act recognizes that the Highlands Region is an essential source of drinking water, providing clean and plentiful drinking water for one-half of the State's population, containing other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora, and includes many sites of historic significance, and provides abundant recreational opportunities for the citizens of the State; and

WHEREAS, on July 17, 2008, the Fair Housing Act was amended by P.L. 2008, Chapter 46, to create a responsibility for the Highlands Council to identify and coordinate opportunities for affordable housing on a regional basis with consideration for infrastructure, employment opportunities, and transportation and to require a 20 percent affordable housing set-aside in residential developments; and

WHEREAS, on September 5, 2008, Governor Corzine signed Executive Order 114 which requires COAH and the New Jersey Highlands Council (Highlands Council) to enter into a Memorandum of Understanding (MOU) designed to coordinate the regulations of both agencies

to maximize affordable housing opportunities while preserving critical environmental resources within the Highlands Region; and

WHEREAS, COAH and the Highlands have prepared such an MOU, which was adopted by COAH on October 29, 2008 and by the Highlands Council on October 30, 2008; and

WHEREAS, the MOU provides for a cooperative planning process between the Highlands Council and COAH to advance coordinated and comprehensive regional planning, and provide consistent planning policies upon which municipalities may rely; and

WHEREAS, the Highlands Council adopted its Regional Master Plan (RMP) on July 17, 2008; and

WHEREAS, under voluntary Plan Conformance, the Highlands Act provides that municipalities and counties with lands in the Highlands Planning Area have the option to petition the Highlands Council to revise their master plans and associated regulations, as applicable to the development and use of land in the Planning Area, to conform with the goals, requirements, and provisions of the RMP; and

WHEREAS, conformance with the RMP requires revisions to municipal and county master plans and development regulations, as applicable to the development and use of land, to align them with the goals, requirements, and provisions of the RMP; and

WHEREAS, COAH regulations establish a December 31, 2008 deadline for municipalities currently under the jurisdiction of COAH to submit third round petitions for substantive certification of a municipal housing element and fair share plan; and

WHEREAS, in keeping with the requirement in Executive Order 114 to provide reasonable extensions of deadlines, the MOU between the Highlands and COAH specifies that COAH shall grant a waiver from the December 31, 2008 deadline to December 8, 2009 for any municipality under COAH's jurisdiction that, before December 31, 2008: 1) submits a duly adopted Notice of Intent to Petition in accordance with the Highlands Council's Plan Conformance Guidelines; and 2) submits a duly adopted resolution notifying COAH of its intent to petition COAH for substantive certification of a housing element and fair share plan no later than December 8, 2009; and

WHEREAS, pursuant to N.J.A.C. 5:96-15.2, COAH may grant waivers to specific provisions of its rules if it is demonstrated that the strict application of the rule would create an unnecessary financial, environmental or other hardship; and

WHEREAS, the Highlands Council has determined that municipalities seeking voluntary Plan Conformance are required to revise their master plans and associated regulations to conform to the provisions of the Highlands RMP; and

WHEREAS, Executive Order 114 requires the Highlands Council to assist COAH in developing adjusted growth projections consistent with the RMP and COAH has determined that requiring Highlands municipalities to submit their third round petition for substantive certification to COAH prior to the issuance of revised growth projections from the Highlands Council, as provided in the MOU, would create an unnecessary hardship for Highlands municipalities seeking to conform to the RMP by requiring them to resubmit third round petitions with substantial changes; and

WHEREAS, the MOU provides that COAH shall issue a scarce resource order for all municipalities in the Highlands Region under COAH's jurisdiction in order to preserve scarce land, water, and sewer resources and to dedicate these resources on a priority basis for the production of affordable housing until such time as the municipality receives substantive certification from COAH or demonstrates that appropriate measures have been taken to preserve such resources; and

WHEREAS, pursuant to N.J.A.C. 5:96-12.1, COAH may, at any time, upon its own determination or upon the application of any interested person, issue such orders as may be necessary to require that a municipality take appropriate measures to reserve scarce resources that may be essential to fulfill the municipality's fair share obligation.

NOW, THEREFORE, BE IT RESOLVED, that COAH hereby grants a waiver from the December 31, 2008 deadline to submit a revised housing element and fair share plan pursuant to N.J.A.C. 5:96-16, extending that deadline to December 8, 2009, for all Highlands municipalities under the jurisdiction of COAH provided any municipality seeking such an extension submits the following items to COAH on or before 12:00 Noon on December 31, 2008:

- 1) a duly adopted Notice of Intent to Petition in accordance with the Highlands Council's Plan Conformance Guidelines, including both the Highlands Planning Area and the Highlands Preservation Area, as applicable; and

- 2) a duly adopted resolution notifying COAH of its intent to petition COAH for substantive certification of a housing element and fair share plan no later than December 8, 2009; and

BE IT FURTHER RESOLVED, that a scarce resource restraint is hereby imposed on all municipalities in the Highlands Region under COAH's jurisdiction; and

BE IT FURTHER RESOLVED, that the scope of this scarce resource restraint shall apply to any and all municipal actions associated with development approvals, water allocation and wastewater allocation but shall not apply to single-family or duplex units on existing lots, any residential development that includes at least a 20 percent set-aside on-site for affordable housing or any activity that is formally determined to be exempt from the Highlands Act or is formally granted a waiver under the Highlands Act or the RMP; and

BE IT FURTHER RESOLVED, that the scarce resource restraint hereby imposed shall remain in full force and effect in each of the above referenced municipalities until such time as the municipality receives substantive certification from COAH or demonstrates to COAH that appropriate measures have been taken to preserve scarce land, water, and sewer resources and that same have been dedicated on a priority basis for the production of affordable housing.

I hereby certify that this Resolution was duly adopted by the Council on Affordable Housing at its meeting on November 12, 2008.



Renée Reiss  
Council Secretary